

Exhibit A

Lisa S. Wahlin, State Bar No. 013979
 Erin E. Byrnes, State Bar No. 021015
GRAIF, BARRETT & MATURA, P.C.
 1850 North Central Avenue, Suite 500
 Phoenix, Arizona 85004
 Tel: (602) 792-5700
 Fax: (602) 792-5710
 Email: lwahlin@gbmlawpc.com
*Attorneys for Defendants Maricopa County
 and Cincy Rodriguez*

Daniel P. Struck, State Bar No. 012377
 Rachel Love, State Bar No. 019881
 Amy L. Nguyen, State Bar No. 023383
STRUCK WIENEKE & LOVE, P.L.C.
 3100 West Ray Road, Suite 300
 Chandler, Arizona 85226
 Telephone: (480) 420-1600
 Fax: (480) 420-1696
 minuteentries@swlfirm.com
*Attorneys for Defendants Joseph and Ava Arpaio,
 Karyn Schwartz (fka Karyn Kleinschmidt), Randal
 Harenberg, Sandra Garfias, Diane Galaviz, Stefanie
 Leppert, Lucy Akpan and Carlene Harenberg*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINAL

JENNIFER BRAILLARD, personal
 representative of the Estate of Deborah Ann
 Braillard, Deceased; JENNIFER
 BRAILLARD, surviving daughter of Deborah
 Ann Braillard,

Plaintiffs,

v.

MARICOPA COUNTY, a public entity;
 MARICOPA COUNTY SHERIFF'S OFFICE,
 a division of Maricopa County, et al.

Defendants.

Case No. CV2006-01548

**DEFENDANTS' JOINT MOTION
 TO BIFURCATE PLAINTIFFS'
 MONELL CLAIMS AGAINST
 MARICOPA COUNTY AND
 SHERIFF ARPAIO**

(Assigned to the Honorable Gilbert V.
 Figueroa)

Plaintiffs have asserted two separate and distinct categories of federal claims under
 42 U.S.C. § 1983. The first category of claims alleges that the individual defendants
 (nurse, detention officers, and Sheriff Arpaio) were deliberately indifferent to Deborah
 Braillard's medical needs, which violated her constitutional rights. The second category

1 of claims alleges that Maricopa County and Sheriff Arpaio implemented unconstitutional
2 policies and practices in the Maricopa County jails (*Monell* claims). As *Monell v. New*
3 *York Dep't of Social Services* and its progeny establish, Plaintiffs' custom and policy
4 claims against Maricopa County and Sheriff Arpaio cannot succeed unless Plaintiffs can
5 prove that a violation of Deborah Brailard's constitutional rights occurred. *Monell*, 436
6 U.S. 658, 691 (1978).

7 To prove their *Monell* claims against Maricopa County and Sheriff Arpaio,
8 Plaintiffs **must** first prove that the individual defendants, through their own actions or
9 inactions, violated decedent's constitutional rights. See *City of Los Angeles v. Heller*, 475
10 U.S. 796, 799 (1986) ("[N]either *Monell* nor any other of our cases authorize the award of
11 damages against a municipal corporation based on the actions of one of its officers when
12 in fact the jury has concluded that the officer inflicted no constitutional harm. If a person
13 has suffered no constitutional injury at the hands of the individual police officer, the fact
14 that the departmental regulations might have *authorized* the use of constitutionally
15 excessive force is quite beside the point.") (internal citation omitted; emphasis in
16 original). If Plaintiffs fail to prove that the individual defendants violated decedent's
17 constitutional rights, their *Monell* claims against Maricopa County and Sheriff Arpaio
necessarily fail as a matter of law. *Id.*

18 Accordingly, pursuant to Arizona Rule of Civil Procedure 42(b), Defendants
19 request that this Court bifurcate the trial, as most courts that have considered this issue
20 have done. The Court should hold two separate trials of Plaintiffs' § 1983 claims. The
21 first trial would address only the claims against the individual defendants and would
22 determine whether their conduct violated Deborah Brailard's constitutional rights and/or
23 was negligent. If the jury finds that a constitutional violation occurred, the second trial
24 would then address Plaintiffs' *Monell* claims against Maricopa County and Sheriff Arpaio.
25 If, on the other hand, the jury finds that no constitutional violation occurred, the *Monell*
26 claims necessarily fail as a matter of law and a second trial would be unnecessary.
27 Defendants estimate that bifurcation could shorten the trial by at least two weeks.
28 Bifurcation will maximize the efficiency of the trial, and minimize the inherent prejudice

1 to the individual defendants of the introduction of custom and policy evidence against
2 Maricopa County and Sheriff Arpaio.

3 **I. FACTUAL BACKGROUND**

4 This matter arises out of the death of Deborah Brailard, an insulin-dependent
5 diabetic who was arrested on January 1, 2005 and booked into jail for possession of two
6 golf-ball sized pieces of methamphetamine. During her booking and subsequent detention
7 in the Maricopa County jail system, the decedent hid her diabetes as part of a longstanding
8 plan to try to avoid jail time by becoming ill and thus being transferred from jail to a
9 hospital. As a result of her deceit, the decedent did not receive the care and treatment for
10 diabetes that is routinely given to pretrial detainees and inmates until it was too late.

11 The decedent's daughter brought claims against the individual defendants – nurses
12 and detention officers who were working in the jail during the decedent's incarceration –
13 for negligence, gross negligence, and violations of 42 U.S.C. § 1983 for their alleged
14 deliberate indifference to the decedent's medical needs.¹ Plaintiffs have also asserted
15 claims against Maricopa County and Sheriff Arpaio, pursuant to § 1983, for implementing
16 jail customs and policies that were allegedly deliberately indifferent to the decedent's
17 right to receive adequate medical care.

18 **II. PLAINTIFFS' *MONELL* CLAIMS AGAINST MARICOPA COUNTY AND 19 SHERIFF ARPAIO SHOULD BE BIFURCATED FROM THE CLAIMS 20 AGAINST THE INDIVIDUAL DEFENDANTS.**

21 “The court, in furtherance of convenience or to avoid prejudice, or when separate
22 trials will be conducive to expedition and economy, may order a separate trial of any
23 claim...or of any separate issue or of any number of claims....” Ariz. R. Civ. P. 42(b);
24 *see, e.g., Cota v. Harley Davidson*, 141 Ariz. 7, 11, 684 P.2d 888, 892 (App. 1984);
25 *Woods v. Harker*, 22 Ariz.App. 83, 86, 523 P.2d 1320, 1323 (1974). The commentary to
26 Rule 42(b) further instructs: “While separation of issues for trial is not to be routinely
27 ordered, *it is encouraged where experience has demonstrated its worth.*” Ariz. R. Civ. P.
28 42(b) cmt. (emphasis added). Courts have found bifurcation to be worthwhile where both
individual and *Monell* claims are at issue, as they are here.

¹ Plaintiffs voluntarily dismissed their claims against Nurse Gloria Eppinger.

1 In *Monell*, the Supreme Court held that a municipality may be directly liable under
2 42 U.S.C. § 1983 only when the “execution of a government’s policy or custom” inflicts
3 the constitutional injury at issue in the case. 436 U.S. at 694. Similarly, a policymaker
4 may be liable in an official capacity if “policy or custom . . . played a part in the violation
5 of federal law.” *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991).
6 “*Monell* claims” have been held “particularly well suited for bifurcation because the
7 evidence needed to show a ‘policy and custom’ on behalf of the municipal entity [or
8 policy maker] is often unnecessary in the suit against the individual official. Furthermore,
9 if a plaintiff fails to show that a constitutional violation occurred in the suit against the
10 individual official, the corresponding cause of action against the municipality [or policy
11 maker] will be mooted.” *Amato v. City of Saratoga Springs, N.Y.*, 170 F.3d 311, 320 (2nd
Cir. 1999).

12 In *Sanchez v. City of Riverside*, 596 F.Supp. 193, 194 (C.D. Cal. 1984), the court
13 granted the defendants’ motion to bifurcate a *Monell* claim from the trial on the individual
14 police officer’s liability, finding that “establishing (and defending against) the City’s
15 liability under *Monell* would be a time-consuming exercise which would, in all
16 probability, be rendered moot by the resolution of plaintiffs’ claims against the individual
17 police officer.” Likewise, in *Ismail v. Cohen*, 706 F.Supp. 243, 251 (S.D.N.Y. 1989), the
18 court ordered separate trials of the § 1983 claims against individual police officers and the
19 City of New York, noting the “danger that evidence admissible on the issues relating to
20 conduct by the City or Officer Cohen will ‘contaminate’ the mind of the finder of fact in
21 its consideration of the liability of the other defendant.” The *Ismail* Court explained that,
22 for example, evidence concerning a City policy encouraging discrimination, or evidence
23 that the City failed to adequately train its officers, could prejudice the jury in its
24 determination of the culpability of individual defendant Officer Cohen. *Id.* The *Ismail*
25 Court further explained that, conversely, if the jury determined that Officer Cohen was
26 culpable, that finding might unfairly influence the jury’s determination of whether the
City had a policy leading to discriminatory treatment. *Id.*

27 Here, a separate trial on the liability of the individual defendants will either dispose
28

1 of, or establish a necessary element of, Plaintiffs' *Monell* claims against Maricopa County
2 and Sheriff Arpaio: whether conduct by the individual defendants amount to a
3 constitutional deprivation or negligence. *See Heller*, 475 U.S. at 799. A separate trial will
4 also prevent prejudice to the individual defendants. Substantially different evidence –
5 much of which will be highly prejudicial to the individual defendants – is required to
6 prove Maricopa County and Sheriff Arpaio's liability under *Monell*. Thus, bifurcation will
7 further the goals of expediency and judicial economy and will avoid the danger of unfair
8 prejudice.

9 **A. Bifurcation Will Preserve the Resources of the Court and the Parties.**

10 As previously discussed, the claims against the individual defendants should be
11 tried first because establishing the individual defendants' liability, or lack thereof, will
12 either dispose of or prove a necessary element of Plaintiffs' *Monell* claims. Trying the
13 individual claims first is undeniably most efficient, as each claim requires substantially
14 different evidence.

15 Plaintiffs' § 1983 claims against the individual defendants require proof that they
16 each acted with deliberate indifference to decedent's medical needs during her
17 incarceration in January of 2005. Evidence in support of or against these claims will
18 necessarily include testimony from witnesses having personal knowledge of the events
19 surrounding decedent's medical condition, arrest, incarceration and medical treatment
20 before her death. In contrast, Plaintiffs' *Monell* claims against Maricopa County and
21 Sheriff Arpaio require proof that they implemented unconstitutional customs and policies
22 which inflicted or played a part in the constitutional deprivation. *Monell*, 436 U.S. at 694;
23 *Larez*, 946 F.2d at 646. Evidence in support of or against these claims will necessarily
24 include testimony from witnesses about the policies, customs and practices of
25 Correctional Health Services and the Maricopa County Sheriff's Office prior to
26 decedent's incarceration in January of 2005.

27 Thus, bifurcating the two categories of claims will allow the Court and parties to
28 avoid taking valuable trial time to present evidence on claims that may never be reached.
Indeed, as one court has aptly observed, "by first litigating the claims against individual

1 officers, the parties may never reach the *Monell* claims. This order of presentation thus
2 conserves the resources of both the parties and the court.” *Jones v. City of Chicago*, No.
3 98 C 5418, 1999 WL 160228, at *2 (N.D. Ill. Mar. 10, 1999); *see also Daniels v. Loizzo*,
4 178 F.R.D. 46, 49 (S.D.N.Y. 1998) (“Because a second trial may be unnecessary, the
5 parties and the Court may benefit from a bifurcated trial process.”). Efficiency is always
6 an important goal, but it is even more critical in these dire economic times during which
7 Arizona’s court system has lost resources due to massive budget cuts, and jurors
8 empanelled for a lengthy trial will likely suffer financial hardships.

9 **B. Bifurcation Will Prevent Prejudice to the Individual Defendants.**

10 Although the parties have not yet filed their final lists of exhibits to be used at trial,
11 Plaintiffs Rule 26.1 disclosures list a plethora of proposed evidence that is relevant only to
12 the *Monell* claims against Maricopa County and Sheriff Arpaio. Such evidence includes,
13 among other things: (1) the testimony of Dr. Todd Wilcox, who is the former medical
14 director of Maricopa County Correctional Health Services, regarding the alleged general
15 failings of Maricopa County’s correctional health system and the resignation letter he
16 submitted to the County in February 2008; (2) portions of unrelated past litigation,
17 including a settlement agreement between Maricopa County and the Department of
18 Justice entered in 1999, and an amended stipulated judgment in the federal class action
19 captioned *Hart v. Hill* (aka *Graves v. Hill*), which was entered in January 1995; and (3)
20 reports of past jail conditions, which include the March 2000 report prepared by
21 Jacqueline Moore, the August 2003 report of Jon Bosch and Dennis Liebert, and a letter
22 written by the Department of Justice to the Maricopa County Board of Supervisors with
regard to jail conditions in 1996.²

23 Additionally, it is anticipated that the following witnesses will be called to testify
24 to support or contest Plaintiffs’ *Monell* claims: Joseph Arpaio, Jacqueline Moore, Gerard
25 Sheridan, Todd Wilcox, Bill Williams, Joanne Dorman and Margaret Green. It is
26 important to note that none of these witnesses have personal knowledge of Deborah

27 ² Defendants are not conceding that this evidence is admissible, but it is clear that
28 Plaintiffs will attempt to introduce some or all of this evidence in support of their custom
and policy claims.

1 Braillard's incarceration in the Maricopa County Jail in January of 2005, and the majority
2 of the witnesses will only be testifying to the policies, customs and training of Maricopa
3 County and Sheriff Arpaio.

4 Such evidence, if admitted, will have no probative value with respect to Plaintiffs'
5 claims that the individual defendants were deliberately indifferent to Deborah Braillard's
6 constitutional rights. Its admission, however, would be highly prejudicial, as it would
7 likely taint the jury's view of the individual defendants and their conduct. In other words,
8 there is a high probability that such *Monell*-related evidence, which is inadmissible
9 against the individual defendants on Plaintiffs' claim of deliberate indifference or
10 negligence, will prejudice the individual defendants if the jury believes that Maricopa
11 County and Sheriff Arpaio's customs, policies and procedures pertaining to medical care
12 in the jails may have been improper at the time of, and several years prior to, the
13 decedent's incarceration.

14 This risk of unfair prejudice to the individual defendants will be eliminated only if
15 the Court bifurcates the trial of the *Monell* claims against Maricopa County and Sheriff
16 Arpaio from the remaining claims against the individual defendants. The risk of such
17 prejudice cannot be eliminated via the use of a limiting instruction to the jury. The
18 anticipated breadth of the *Monell*-related evidence is too far-reaching to reasonably
19 presume the jury will be able to keep track of which evidence should be considered only
20 with respect to the *Monell* claims against Maricopa County and Sheriff Arpaio, and which
21 evidence may bear on the constitutional liability of the individual defendants based on
22 their own conduct.

23 In addition, the jury will likely be confused if they are allowed to hear *Monell*-
24 related evidence prior to determining whether the individual defendants committed
25 constitutional violations. As an example, information on training requirements and
26 programs implemented by MCSO and CHS, which **does not** reflect the training **actually**
27 **received** by the individual defendants, may be admissible against Maricopa County and
28 Sheriff Arpaio to prove Plaintiffs' § 1983 claim of negligent hiring, training, and
supervision. *See, e.g., Amato*, 972 F.Supp. at 124; *Carson v. City of Syracuse*, No. 92 Civ.

1 777, 1993 WL 260676, at *3 (N.D.N.Y. July 7, 1993). The same evidence, however,
2 would not be relevant to the claims against the individual defendants and would likely be
3 excluded in a trial against the individual defendants because of its prejudicial nature and
4 limited probative value. *See* Ariz. R. Evid. 403.

5 **C. Bifurcation Will Not Prejudice Plaintiffs.**

6 Plaintiffs would suffer no prejudice if the Court and the parties are spared the
7 substantial burdens involved in litigating their *Monell* claims until after the underlying
8 constitutional claims against the individual defendants have been tried.

9 First, Plaintiffs will suffer no delay or prejudice in the pursuit of their claims.
10 Discovery is already complete. If the first trial results in a defense verdict, bifurcation
11 would actually save Plaintiff from expending unnecessary resources to litigate Maricopa
12 County and Sheriff Arpaio's liability on the *Monell* claims. And in the event the first trial
13 results in a verdict for Plaintiffs, the Court could order that the trials occur "back-to-back"
14 with the same jury so that proof need not be repeated in the second trial.

15 Second, Plaintiffs' potential recovery of damages would not be affected by
16 proceeding first against the individual nurse and detention officer defendants. As a matter
17 of law, even if Plaintiffs' *Monell* claims are ultimately proven at trial, Plaintiffs are not
18 entitled to recover any additional compensatory damages in excess of what may be
19 recovered against the individual defendants. *See Spanish Action Comm. of Chicago v.*
20 *City of Chicago*, 766 F.2d 315, 321 (7th Cir. 1985); *Jones v. City of Chicago*, 856 F.2d
21 985, 995 (7th Cir. 1988) (policy claim against City of Chicago "has little, probably no,
22 practical consequence" when considering damages because the City indemnifies its
23 employees for torts committed within the scope of their employment). Further, Maricopa
24 County is not required to pay punitive damages under any circumstances, and punitive
25 damages cannot be awarded against Sheriff Arpaio in his official capacity, so bifurcation
26 of Plaintiffs' *Monell* claims would also not affect Plaintiffs' ability to recover punitive
27 damages. *City of Newport v. Facts Concerts*, 453 U.S. 247 (1981). In short, bifurcation
28 would not prejudice Plaintiffs, and could potentially reduce Plaintiffs' costs.

///

1 **III. CONCLUSION**

2 Defendants respectfully request that the Court bifurcate the trial so that the jury
3 may resolve Plaintiffs' constitutional claims against the individual defendants before
4 engaging in the costly and more time-consuming trial of the *Monell* claims against
5 Maricopa County and Sheriff Arpaio. Bifurcation will promote judicial economy, save
6 fees and costs, and could potentially prevent the jury from having to sit through five
7 weeks of trial.

8 RESPECTFULLY SUBMITTED this 3rd day of November, 2011.

9 **GRAIF BARRETT & MATURA, P.C.**

10
11 By *Lisa S. Wahlin*
12 Lisa S. Wahlin
13 Erin E. Byrnes
14 1850 North Central Avenue, Suite 500
15 Phoenix, Arizona 85004
16 Attorneys for Defendants Maricopa
17 County and Cincy Rodriguez

18 **STRUCK WIENEKE & LOVE, P.L.C.**

19
20 By *Lisa S. Wahlin for*
21 Daniel P. Struck
22 Rachel Love
23 Amy L. Nguyen
24 3100 W. Ray Road, Suite 300
25 Chandler, Arizona 85226
26 Attorneys for Defendants Joseph and
27 Ava Arpaio, Karyn Schwartz, Randal
28 Harenberg, Carlene Harenberg, Sandra
 Garfias, Diane Galaviz, Stefanie
 Leppert, and Lucy Akpan

1 Original of the foregoing Mailed this
2 3rd day of November, 2011 for filing with:

3 Clerk of the Court
4 Pinal County Superior Court
5 P.O. Box 1583
6 Florence, AZ 85132

7 Copies of the foregoing mailed
8 this 3rd day of November, 2011 to:

9 Michael C. Manning, Esq.
10 Larry J. Wulkan, Esq.
11 STINSON MORRISON HECKER, LLP
12 1850 N. Central Ave. Suite 2100
13 Phoenix, AZ 85004-4584
14 *Attorneys for Plaintiffs*

15 Daniel P. Struck, Esq.
16 Rachel Love, Esq.
17 Amy L. Nguyen, Esq.
18 STRUCK WIENEKE & LOVE, PLC
19 3100 West Ray Road, Suite 300
20 Chandler, AZ 85226
21 *Attorneys for MCSO Defendants*

22 By 
23 _____
24
25
26
27
28

Filed on 2/23/2012 4:57:06 PM

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 02/22/2012

THE HON GILBERTO V FIGUEROA,

Courtroom: 2A

Court Reporter: MICHELLE WELLNER

CHAD A ROCHE, CLERK

By Deputy Clerk: GINA LAUGHLIN

**JENNIFER BRAILLARD, personal
representative of the Estate of Deborah
Ann Brillard, surviving daughter of
Deborah Ann Brillard,**

Plaintiff(s),

vs.

**MARICOP COUNTY, a public entity,
MARICOPA COUNTY SHERIFF'S OFFICE, a
division of Maricopa County, et al.,**

Defendant(s).

)
) **S1100CV200601548**
)
)

) **MINUTE ENTRY ACTION:**
)

) **CONTINUATION OF MOTIONS**
) **IN LIMINI**
)
)

PRESENT:

Plaintiff appearing by counsel, Leslie O'Hara and Michael C. Manning.

Defendants, Maricopa County/ Cincy Rodriguez, appearing by counsel,
Lisa Wahlin, Pam Hostallero and Amy Nguyen.

Defendants, Joseph and Eva Arpaio, appearing by counsel Daniel P.
Struck.

10:06 a.m. Court convenes.

The Court states it had an opportunity to review the new Motion to Strike. As of yesterday, they left off having finished the motion for both defendants and will now proceed with the motions in limini for the plaintiff, and move on to the Motion to Bifurcate and the Motion to Strike.

Plaintiff's MOTION IN LIMINI TO PRECLUDE USE OF ALLEGED STATEMENTS
BY DEBORAH BRAILLARD AGAINST HER ESTATE is presented to the Court.

Filed on 2/23/2012 4:57:06 PM

Arguments of counsel.

The Court is inclined to admit the statements solely for the purpose of attempting to establish that the victim was not going to tell anybody about her diabetes, but not for any purpose that she had in mind as to avoid telling. The statement is marginally admissible, and marginally relevant. The plaintiff is correct that it can introduce the fact that she did not tell anybody being more probative that she didn't tell anybody.

IT IS HEREBY ORDERED the defendants are allowed to use statements from Robert Selman or another witness that the victim made the statement saying she was not going to tell people that if she went to jail, she was a diabetic.

Plaintiff's MOTION IN LIMINI RE: ADMISSIBLE, PREJUDICIAL, BAD CHARACTER EVIDENCE OF DEBORAH BRAILLARD is presented to the Court.

Arguments of counsel.

The Court states the information is relevant, and believes there is probative value to the evidence of the victim's criminal history. The Court is not convinced that the use of presentence reports are going to be helpful, or that the reports outweigh the prejudicial effect.

IT IS FURTHER ORDERED allowing the introduction of the prior criminal history and allowing the allegations and the testimony of the drug use and alcohol use.

FURTHER ORDERED disallowing the introduction of the probation reports or the presentence reports. The nature of the charges shall be allowed, but without referring to them as felonies.

FURTHER ORDERED disallowing the references to the person that stated she urinated for the victim.

The Court states as to the argument that the drug use was a contributing factor in causing her death, which is the reason a request for the history was presented, the Court feels that argument would go to damages at this point, and not sure if it causation since the Court does not have enough evidence to determine if the report can be used for causation.

As to the evidence of the victim dealing drugs or other illicit activities, the Court states Judge O'Neil precluded the computer that would have had any information regarding that issue.

FURTHER ORDERED if there are witnesses who will testify that they witnessed the victim using and selling drugs, the Court will deal with those witnesses as they take the

Filed on 2/23/2012 4:57:06 PM

stand. That issue goes to damages to how that lifestyle affected Jennifer Brailard, not as to how bad the victim was because she was selling drugs.

Plaintiff's MOTION IN LIMINI TO EXCLUDE DR. GREENBURG'S OPINION THAT PNEUMONIA WAS THE UNDERLYING CAUSE OF BRAILLARD'S DEATH is presented to the Court.

Arguments of counsel.

The Court states the initial review of the records in the documents of the testimony that Dr. Greenburg provided in the deposition, leads the Court to conclude that Dr. Greenburg is not a qualified expert and is excludable; therefore,

FURTHER ORDERED excluding Dr. Greenburg, the Court does not believe he is qualified to give the opinions that he has given, and is basing his opinions on assumptions and not specifically on evidence that he has, personal knowledge, or that he has any scientific support for.

The Court advises the parties that if they want a Fry Hearing, it will be granted, and will have to be done quickly, however, if the defendants are calling Dr. Greenburg, they do not get the second doctor.

FURTHER ORDERED if Dr. Greenburg will be called as a witness, the plaintiffs are entitled to have an expert review the studies that he has made and the studies he is relying on, which could create a time problem.

11:42 a.m. Recess.

1:32 p.m. Reconvene in Courtroom. All parties previously present are now present.

THE RECORD MAY SHOW the courtroom clerk at this time is **Anne Ross**.

Plaintiff's MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM ARGUING QUALIFIED IMMUNITY is presented to the Court.

Arguments of counsel.

Counsel for Plaintiff requests the Court withdraw the Motion In Limine to Preclude Defendant from Arguing Qualified Immunity.

FURTHER ORDERED Plaintiff's MOTION IN LIMINE TO PRECLUDE DEFENDANTS FROM ARGUING QUALIFIED IMMUNITY shall be withdrawn by request of counsel for Plaintiff.

The Court is presented with JOINT MOTION FROM THE DEFENDANTS TO BIFORCATE THIS TRIAL.

Filed on 2/23/2012 4:57:06 PM

Arguments of counsel.

2:11 p.m. THE RECORD MAY SHOW the courtroom clerk now present is **Gina Laughlin**.

FURTHER ORDERED denying the Motion to Bifurcate the case.

MOTION TO STRIKE is presented to the Court.

Arguments of counsel.

FURTHER ORDERED allowing Wanda Echols to testify, but only if she is made available for interview or deposition within the next 3-5 days. If she is not interviewed and/or deposed by the end of five days, then she is out.

Counsel for plaintiff request the defendants prepare a full disclosure of Ms. Echols background, her knowledge of the case and what she will be testifying about.

FURTHER ORDERED directing the defendant to submit a curriculum vitae of Ms. Echols.

FURTHER ORDERED the defendant's shall make sure the material is emailed or faxed, no later than 5:00 p.m. Saturday, and within 3-5 days after received, by Tuesday or Thursday, the plaintiffs shall conduct their interview/deposition.

Counsel for plaintiff states they have no objections to defendant's PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM.

FURTHER ORDERED granting the Writ and formal WRIT OF HABEAS CORPUS AD TESTIFICANDUM is signed and filed this date.

Discussion of Court and counsel regarding issues for a Fry hearing.

The Court believes that the plaintiff should have an opportunity to review any articles or journalism that the doctor relies on. If the doctor refers to specific articles in his deposition, it shall be provided to the plaintiff to allow them to cross-examine at the Fry hearing.

Counsel for plaintiff states since they are requesting punitive damages, understands that they are not entitled to view financial statements today, however, request that Sheriff Arpaio, Officer Garfius, Diane Galaviz, Cincy Rodriguez, Dennis Liebert and Markwell, produce sealed personal sworn financial statements with their community assets and personal assets to the Court, prior to the trial.

Objections by counsel for defendants.

Filed on 2/23/2012 4:57:06 PM

The Court states it does not want to cause a delay with the trial, and the most efficient means is to order the records be provided to Mr. Struck and he shall verify that he has been provided with a financial statement, which includes a detailed accounting of the personal community assets of the individual defendants, and if they become necessary, will provide them to the Court.

The Court suspects the request for the sealed financial documents will result in the filing of a Special Action to challenge the Court's ruling.

Upon agreement of the parties;

FURTHER ORDERED continuing this cause for TELEPHONIC HEARING on Friday, February 24, 2012 at 9:00 a.m, before the Honorable Gilberto V. Figueroa.

3:24 p.m. Hearing concludes.

Mailed/distributed copy: 02/23/2012

DANIEL P. STRUCK – minuteentries@swlfirm.com

MICHAEL C. MANNING

LESLIE E. O'HARA – mmanning@stinson.com

LISA WAHLIN – lwahlin@gbmlawpc.com

PAMELA A. HOSTALLERO – phostallero@gbmlawpc.com

Office Distribution:
JUDGE/G FIGUERORA